IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 27775 of 2005(F)

PETITIONER:

VELU PRABHAKARAN, AGED 77,
BALAYIL HOUSE, KALAVAMKODAM P.O.,
CHERTHALA, ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:
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1. THE UNION OF INDIA REPRESENTED BY
THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NEW DELHI.

2. THE STATE OF KERALA REPRESENTED BY
THE PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI. AJITH KRISHNAN, ADDL.CGSC
SRI. V.T.K. MOHANAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE APPLICATION OF THE PETITIONER DATED 25.04.1998.

EXT.P2: A TRUE COPY OF THE STATE PENSION ORDER DATED 24.12.1975 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P3: A TRUE COPY OF THE TRUE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON TRIVANDRUM RELATING TO THE PETITIONER ISSUED BY THE SUPERINTENDENT, CENTRAL PRISON, TRIVANDRUM DATED NIL.

EXT.P4: A TRUE COPY OF THE CERTIFICATE ISSUED BY SRI. N.P. THANDAR EX.M.L.A DATED 30.06.74.

EXT.P5: A TRUE COPY OF THE LETTER ISSUED BY THE DEPUTY COLLECTOR, ALAPPUZHA DATED NIL.

EXT.P6: A TRUE COPY OF THE LETTER DATED 07.04.2003 ISSUED BY THE JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

EXT.P7: A TRUE COPY OF THE REVIEW PETITION DATED 25.08.2005 OF THE PETITIONER.

EXT.P8: A TRUE COPY OF THE A.D. CARD OF THE 2ND RESPONDENT DATED NIL.

EXT.P9: A TRUE COPY OF THE REPORT OF THE TAHSILDAR, CHERTHALA DATED NIL.

EXT.P10: A TRUE COPY OF THE COPY APPLICATION AND THE ORDER IN C.C. 12/1124(M.E.) OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NO.I, CHERTHALA DATED 22.06.2006.

EXT.P11:THE RELEVANT PAGES DESCRIBING THE PUNNAPRA-VAYALAR STRUGGLE IN THE BOOK THE HISTORY OF THE FREEDOM STRUGGLE IN KERALA.

EXT.P12: A TRUE COPY OF THE CONVICT REGISTER RELATING TO KUMARAN DATED NIL ISSUED BY THE SUPERINTENDENT CENTRAL JAIL, THIRUVANANTHAPURAM DATED NIL.

EXT.P13: A TRUE COPY OF THE JUDGMENT OF THIS HON/BLE OCURT IN W.P. (C) NO. 31249/2004 DATED 12.01.2005.

EXT.P14: A TRUE COPY OF THE ORDER OF THE UNDER SECRETARY TO GOVERNMENT OF INDIA DATED 12.09.2005.

T.R. RAMACHANDRAN NAIR, J

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W.P.(C) NO. 27775 OF 2005

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Dated this the 22nd day of August, 2007.

JUDGMENT

The petitioner is an applicant for the grant of pension under the S.S.S pension scheme. He was an active participant in the Punnapra- Vayalar struggle. He was remaining underground pursuant to a warrant of arrest issued against him. In the year 1124 ME, he was arrested by the police and tried by the First Class Magistrate Court, Cherthala and was convicted and sentenced to undergo imprisonment for six months. It is also averred that he was imprisoned in the Central Jail, Thiruvananthapuram for six months.

2. Ext.P1 is the application for grant of S.S.S pension dated 25.04.1998. Ext.P2 is the order granting pension by the District Collector under the State scheme. Ext.P3 is the true extract of Convict Register of the Central Prison, Thiruvananthapuram relating to the petitioner and Ext.P4 is the co-prisoner certificate issued by Shri. N.P. Thandar Ex. M.L.A. By Ext.P5, he was informed that as the period of imprisonment pursuant to the conviction is after the independence the appication cannot be

recommended. The petitioner has produced Ext.P6 whereby the Government of India has informed the State Government that as regards the Punnapra-Vayalar struggle even if the entire period of claimed suffering was after independence, it will be covered under the scheme. By Ext.P7, the petitioner again approached the State Government with a review petition. Since no action was taken on it, he has approached this Court with this writ petition.

3. The respondents have filed counter affidavits. In the counter affidavit filed by the 1st respondent, it is stated that the application of the petitioner through the State Government along with their mandatory verification report regarding the petitioner's claim is not received in the ministry. Therefore, it is apparently the inaction of the State Government that is causing delay for the consideration of the petitioner's application.

4. The 2nd respondent has filed a counter affidavit. It is admitted that the petitioner was an accused in C.C.12/1124(M.E) of Judicial First Class Magistrate Court, Cherthala and he suffered imprisonment. It is contended that he suffered only 5 months

imprisonment which is less than the minimum stipulated period for grant of S.S.S pension. It is also admitted that the Kerala Freedom Fighter's pension was granted to him as per the recommendation of the District Advisory Committee. The further averment is that the case C.C. 12/124 is not seen included in the available copy of the Punnapra-Vayalar cases kept in the District Collector's office.

5. Therefore, the substantial objections are that the imprisonment is only for 5 months and that the case does not appear in the register of Punnapra-Vayalar cases. The petitioner has filed a reply affidavit producing various documents. Ext.P9 is the report of the Tahsildar recommending application for State pension. In column I it is clearly stated that applicant has participated in the Punnapra-Vayalar struggle and involved in the case No. C.C.12/1124. On an analysis of Ext.P3, it will be seen that the stand taken in the counter affidavit that he had undergone only 5 months imprisonment is not correct. It shows that he was convict No. 61. Column No. 16 shows that the period of sentence was six months simple imprisonment. The

date of admission is 28th Makaram 1124 and the column No. 23 shows that he was released on 25.11.1124 "on expiry of sentence 26th being sunday". Therefore, it is clear that for the initial one month he was in the custody and he was brought to the Central Prison only by 28th Makaram 1124, otherwise he would not have been released on 25.11.1124 as his period of sentence is six months. Therefore, the contention that he was having only 5 months jail term is not correct as nobody can be released prematurely from prison. Apart from that, the learned counsel for the petitioner invited my attention to Ext.P11 which is an extract from a book relating to various freedom movements in the State and Ext.P11 specifically refers Punnapra-Vayalar movement. Page 12 of Ext.P11 states about the history of the movement and the fact that the general unrest and the turbulent attitude of labourers induced the Government to promulgate the Emergency Provision Act on 1 October in 1946 to declare state of emergency in the State. The register- Ext.P3 in column 14 shows the offence for which the imprisonment is Sections 9(5) r/w 9(1) (a) of Act I of 1122. Therefore, it is clear that he was inflicted in

the case connected with the Punnapra- Vayalar struggle and hence statements in the counter affidavit are clearly unsustainable.

6. Therefore, there is no justification in not recommending his case for grant of Central Pension. Consequently Ext.P5 is quashed. The 2nd respondent is directed to forward the Verification cum Entitlement Report duly recommending the case of the petitioner for grant of S.S.S pension to the 1st respondent within six weeks from the date of receipt of a copy of this judgment. On receipt of the same, the 1st respondent shall pass orders within a period of two months thereafter. The claim of the petitioner for arrears from the date of receipt of Ext.P1 application dated 25.4.1998 will also be considered by the 1st respondent.

The writ petition is disposed of accordingly.

T.R. RAMACHANDRAN NAIR, JUDGE.

rv

KURIAN JOSEPH &
T.R. RAMACHANDRAN NAIR, JJ

L.A.A. NO. 805 of 2001

13th day of July, 2007

JUDGMENT